



Docket No.: 50090-290

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of :  
Keiichiro WAKAMIYA, et al. :  
Serial No.: 09/818,906 : Group Art Unit: 2811  
Filed: March 28, 2001 : Examiner: N. Parekh  
For: SEMICONDUCTOR DEVICE :

2811  
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PATENT  
SEP 16 2002  
TECHNOLOGY CENTER 2800

#8  
9/16/02  
Jaw.

**REQUEST FOR RECONSIDERATION**

Commissioner for Patents  
Washington, DC 20231

Sir:

Reconsideration of the rejections imposed in the Office Action dated June 14, 2002 is solicited in light of the following remarks.

**REMARKS**

**Claim 1 was rejected under the first paragraph of 35 U.S.C. §112 for lack of adequate enabling support.**

In the statement of the rejection, the Examiner asserted that specification does not enable how to form a plurality of layers of the same material having different hardnesses. This rejection is traversed as **legally erroneous**.

Lack of enablement under the first paragraph of 35 U.S.C. §112 is a **question of law**. *U.S. Steel Corp. v. Phillips Petroleum Co.*, 865 F.2d 1247, 9 USPQ2d 1461 (Fed. Cir. 1989); *U.S. v. Telectronics Inc.*, 857 F.2d 778, 8 USPQ2d 1217 (Fed. Cir. 1988). In